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13 Chapter 7 Trustee

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15 **UNITED STATES BANKRUPTCY COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 In re BENJA INCORPORATED, *aka* EPHE
19 CORPORATION,

20 Debtor.

21 Case No. 20-30819-DM
22 Chapter 7
23 Hon. Dennis Montali

24

25 **DECLARATION OF A. KYLE
26 EVERETT IN SUPPORT OF CHAPTER
27 7 TRUSTEE'S MOTION TO APPROVE
28 COMPROMISE OF CONTROVERSY
WITH DANIEL IAN WEINER**

29

30 Hearing:

31 *No hearing requested. Noticed pursuant to
32 B.L.R. 9014-1(b)(3).*

33

34 I, A. Kyle Everett, declare as follows:

35 1. I am the duly appointed Chapter 7 trustee of the bankruptcy estate of the above-
36 captioned debtor. I have personal knowledge of the facts set forth below, except those stated on
37 information and belief, and as to those facts, I am informed and believe they are true. If called
38 upon to testify as a witness, I could and would competently testify to these facts.

39 2. I make this declaration in support of the concurrently filed *Chapter 7 Trustee's*
40 *Motion to Approve Compromise of Controversy with Daniel Ian Weiner*. This declaration uses

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1 the same defined terms set forth in that Motion. A true and correct copy of the Settlement
2 Agreement referenced in the Motion is attached to this declaration as **Attachment 1**.

3 3. I am informed and believe that Benja was ostensibly an e-commerce and digital
4 advertising company, and that Mr. Chapin served as Benja's chief executive officer from its
5 founding until at least September 2020.

6 4. Mr. Chapin entered into a criminal plea agreement in which he admitted to bank
7 fraud, wire fraud, and securities fraud. I am informed and believe that the charges generally arose
8 from, among other things, false statements and omissions about Benja's revenue, accounts
9 receivable, and commercial dealings that were made to Benja's creditors, investors, and
10 prospective investors to induce payments and/or investments.

11 5. I am informed and believe that Mr. Weiner performed work for, and for the
12 benefit of, Benja and Mr. Chapin beginning on or about January 15, 2018. The Complaint
13 alleges, among other things, that (1) on multiple occasions between about April through July
14 2020, Mr. Weiner assisted Mr. Chapin's fraudulent scheme by impersonating representatives of
15 companies with which Benja falsely claimed to have business relationships; (2) during this time,
16 Mr. Weiner made materially false and fraudulent representations to creditors, investors, and
17 prospective investors; (3) investors paid over \$10 million to Benja following the date of Mr.
18 Weiner's first impersonation, and at least some of these payments were induced in part by Mr.
19 Weiner's fraud; and (4) Mr. Weiner received compensation specifically for these impersonation
20 actions, as well as in the course of his employment generally. Mr. Weiner disputes these
21 allegations.

22 6. Without admitting or determining any fault or liability whatsoever, the parties
23 entered into the Settlement Agreement to settle all claims for relief between them.

24 7. I have received Mr. Weiner's payment pursuant to the terms set forth in the
25 Settlement Agreement.

26 8. For the reasons stated below, I believe in my reasonable business judgment that
27 the Settlement Agreement is fair and equitable and that it fulfills the *A & C Properties* factors.
28

1 9. Probability of Success. I am informed and believe that the probability of
2 establishing liability against Mr. Weiner is high, and thus this factor does not favor approval of
3 the Settlement Agreement. However, I am informed and believe that this factor is offset by the
4 other factors discussed below. It is useful to break down the anticipated liability into three
5 portions:

6 a. **Payments made to Mr. Weiner specifically for his impersonation of**
7 **purported customers of Benja.** I am confident that I would succeed in
8 obtaining a judgment for avoidance of these payments. I am informed and
9 believe that the evidence strongly supports the avoidance of the transfers as
10 actual fraud under a Ponzi scheme orchestrated by Mr. Chapin, who pled
11 guilty to crimes related to his fraud in operating Benja and deceiving investors
12 and lenders with fabricated accounts receivable and financial statements. I am
13 further informed and believe that case law provides a presumption of actual
14 fraud when, as here, there is a criminal plea establishing the elements of a
15 Ponzi scheme and the transfers were made in furtherance of such scheme. I
16 also believe that these payments would be avoided as constructive transfers
17 because the Debtor received less than a reasonably equivalent value in
18 exchange for the payments and the Debtor (1) was insolvent when the
19 payments were made; (2) was engaged in business with unreasonably small
20 capital; (3) intended to incur, or believed that it would incur, debts beyond
21 its ability to pay; and/or (4) made the payments to an insider under an
22 employment contract and not in the ordinary course of business.

23 b. **Mr. Weiner's entire salary.** I am informed and believe that Mr. Weiner
24 performed work beginning on or about January 15, 2018. In contrast to the
25 avoidance claims discussed above, as to which I believe liability would
26 readily be established under one or more theories, I am informed and believe
27 that Mr. Weiner may have viable arguments against the avoidance of his
28 entire salary. These may include arguments that (1) Mr. Weiner's work prior

1 to his impersonation of purported customers was not done in furtherance of a
2 fraudulent scheme; and (2) Benja received reasonably equivalent value in
3 exchange for the salary paid to Mr. Weiner. While I would dispute these
4 arguments, I am informed and believe they demonstrate a risk that a court
5 might not find Mr. Weiner liable for avoidance of his entire salary.

6 c. **Damages for aiding and abetting fraud.** I am confident that a court would
7 be persuaded by the evidence that (1) Mr. Weiner assisted Mr. Chapin's
8 fraudulent scheme by impersonating representatives of purported customers of
9 Benja; (2) Mr. Weiner made materially false and fraudulent representations to
10 creditors, investors, and prospective investors; and (3) investors paid over \$10
11 million to Benja following the date of Mr. Weiner's first impersonation.
12 However, I am informed and believe that Mr. Weiner may present arguments
13 in his defense such as (1) he was unaware of the full extent of the fraud being
14 committed by Mr. Chapin; and (2) his conduct was not a substantial factor in
15 causing harm to Benja and its creditors and investors. While I would dispute
16 these arguments, I recognize the risk that a court might not find Mr. Weiner
17 liable for fraud damages (or may only find him liable for a small portion of
18 the total damages sought).

19 10. Difficulty of Collection. I am informed and believe that the difficulty of collection
20 element weighs heavily in favor of approving the Settlement Agreement. Mr. Weiner has
21 provided, and I have obtained, financial statements and other information evidencing Mr.
22 Weiner's assets, income, and general financial situation. I am informed and believe that Mr.
23 Weiner is a Rhode Island resident, and that while he owns his home, his equity is limited and
24 would likely be entirely protected by Rhode Island's homestead exemption laws. I am further
25 informed and believe that it is unlikely that garnishment of his wages would result in a
26 meaningful recovery to the bankruptcy estate. For these reasons, I anticipate significant
27 difficulties in collecting from Mr. Weiner, who appears to be effectively judgment proof.

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1 11. Complexity of Litigation, Expense, Inconvenience, and Delay. I am informed and
2 believe that this factor weighs strongly in favor of approval of the Settlement Agreement. I am
3 informed and believe that, while the payments made to Mr. Weiner for his impersonation of
4 purported customers could likely be avoided on a motion for summary judgment, these transfers
5 represent a fairly small amount (as low as approximately \$8,500), which amount would be
6 significantly offset by the cost of bringing such a motion. I am informed and believe that the
7 remaining claims are based upon facts that are disputed by Mr. Weiner. I am informed and
8 believe that litigation of these claims would require the bankruptcy estate to incur substantial
9 fees and costs to conduct discovery and put on a trial. I am further informed and believe that the
10 claim for aiding and abetting fraud is likely to require expert witness testimony to establish
11 damages, further increasing the fees and costs to the bankruptcy estate. For the reasons set forth
12 above, even if I was to receive a large judgment against Mr. Weiner, I believe it is highly
13 unlikely that the estate could recover on that judgment in an amount sufficient to offset the
14 significant cost, inconvenience, and delay of litigation.

15 12. Paramount Interest of Creditors. I am informed that this factor weighs heavily in
16 favor of approval of the Settlement Agreement. I am informed that Mr. Weiner's payment
17 pursuant to the Settlement Agreement represents a significant recovery on the Complaint without
18 incurring the substantial anticipated costs to the bankruptcy estate if these claims were to be
19 litigated, the risk that I would not prevail on his claims, and the high risk that a judgment would
20 be uncollectible.

21 13. In summary, I am informed and believe that the Settlement Agreement is fair and
22 equitable, is within the range of reasonableness, and, in my reasonable business judgment, is in
23 the best interests of the bankruptcy estate and its creditors.

25 I declare under penalty of perjury that the foregoing is true and correct. Executed on May
26 30, 2023.

/s/ A. Kyle Everett
A. Kyle Everett

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